

November 26 2008

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

OP 08-0556

FILED

NOV 26 2008

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANAIN RE THE SUPREME COURT RULE ON
ATTORNEY DISCIPLINE

ORDER

On November 3, 2008, pursuant to M. R. App. P. 14(4), The Billings Gazette, by counsel (the Gazette), filed a Petition for Declaratory Relief. The Gazette requests that this Court exercise its original jurisdiction and declare Rules 20 and 26 of the Montana Rules for Lawyer Disciplinary Enforcement (MRLDE) facially violative of the Montana Constitution. The Gazette argues that because these rules do not incorporate the balancing test of the right to examine documents against the rights of individual privacy—in particular in situations involving a government attorney who holds a position of public trust—they contravene Article II, Section 9 of the Montana Constitution. The Gazette argues that this Court has the authority and duty to assure that its rules are in compliance with the Montana Constitution. In addition to requesting that we declare the offending portions of these rules unconstitutional, the Gazette also asks that we recast these rules so as to vindicate the public's right to know.

As indicated above, the Gazette's request is twofold—it seeks both a declaration of the unconstitutionality of the subject rules, and subsequent rulemaking. This Court concludes the Gazette's Petition has arguable merit. However, as it is the present objective of this Court to ensure that any revised rules should apply to all attorneys in the State Bar and not just government attorneys, we conclude that the more efficient approach in this matter would be to decline to exercise original jurisdiction herein, dismiss the Gazette's Petition without prejudice, and sua sponte initiate public

proceedings to revise the rules at issue pursuant to Section VI of the Montana Supreme Court Internal Operating Rules. Such an approach will eliminate the necessity of adversarial briefing in this matter, and streamline the proceedings while allowing input from the Gazette, the Office of Disciplinary Counsel, the Commission on Practice, the State Bar of Montana, and any and all other persons or organizations with an interest in this matter, as the rulemaking proceeds.

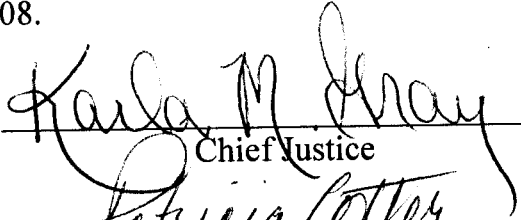
It is the intention of the Court to commence rulemaking proceedings within 60 days of the date of this Order. The Gazette, as well as other interested organizations and persons, will receive notice of the commencement of such proceedings and will have an opportunity to participate therein.

For these reasons,

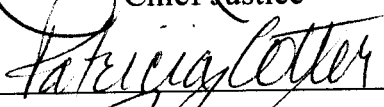
IT IS HEREBY ORDERED that the Petition for Declaratory Relief filed by The Billings Gazette is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the Clerk of this Court serve a copy of this Order upon counsel for the Billings Gazette, and further that the Clerk serve a copy of the Gazette's Petition as well as a copy of this Order upon the Office of Disciplinary Counsel, the Commission on Practice, and the State Bar of Montana.


DATED this 26th day of November, 2008.



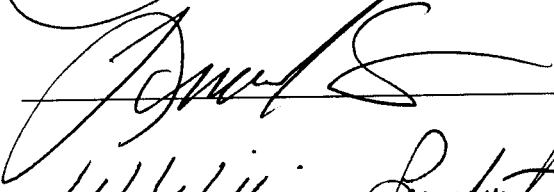
Chief Justice



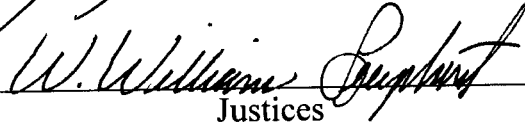
Justice



Justice



Justice



Justices